

Public Law 94-190
94th Congress

An Act

To provide for emergency relief for small business concerns in connection with fixed-price Government contracts.

Dec. 31, 1975
[H.R. 5541]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Small Business
Emergency Relief
Act.

SHORT TITLE

SECTION 1. This Act may be cited as the "Small Business Emergency Relief Act". 41 USC 252 note.

POLICY

SEC. 2. It is the policy of Congress to provide relief to small business concerns which have fixed-price Government contracts in cases where such concerns have suffered or can be expected to suffer serious financial loss because of significant and unavoidable difficulties during performance because of the energy crisis or rapid and unexpected escalations of contract costs. 41 USC 252 note.

DEFINITIONS

SEC. 3. As used in this Act—

41 USC 252 note.

(1) the term "executive agency" means an executive department, a military department, and an independent establishment within the meaning of sections 101, 102, and 104(1) respectively, of title 5, United States Code, and also a wholly owned Government corporation within the meaning of section 101 of the Government Corporation Control Act; and

31 USC 846.

(2) the term "small business concern" means any concern which falls under the size limitations of the "Small Business Administrator's Definitions of Small Business for Government Procurement."

AUTHORITY

SEC. 4. (a) Pursuant to an application by a small business concern, the head of any executive agency may terminate for the convenience of the Government any fixed-price contract between that agency and such small business concern, upon a finding that—

Fixed price
contracts,
termination or
modification.
Application.
41 USC 252 note.

(1) during the performance of the contract, the concern has suffered or can be expected to suffer serious financial loss due to significant unanticipated cost increases directly affecting the cost of contract compliance; and

(2) the conditions which have caused or are causing such cost increases were, or are being, experienced generally by other small business concerns in the market at the same time and are not caused by negligence, underbidding, or other special management factors peculiar to that small business concern.

(b) Upon application under subsection (a) by a small business concern to terminate a fixed-price contract between an executive agency and such small business concern, the head of the executive agency may modify the terms of the contract in lieu of termination for the convenience of the Government only if he finds after review of the application that—

(1) (a) the agency would reprocure the supplies or services in the event that the contract was terminated for the convenience of the Government; and

(b) the cost of terminating the contract for the convenience of the Government plus the cost of reprocurement would exceed the amount of the contract as modified; and

(2) Any such modification shall be made in compliance with cost comparison and compensation guidelines to be issued by the Administrator of the Office of Federal Procurement Policy. Such cost comparison and compensation guidelines shall be promulgated by the Administrator not later than 10 days after enactment of this Act.

(c) If a small business concern in performance of a fixed-price Government contract experiences or has experienced shortages of energy, petroleum products, or products or components manufactured or derived therefrom or impacted thereby, and such shortages result in a delay in the performance of a contract, the head of the agency, or his designee, shall provide by modification to the contract for an appropriate extension of the contract delivery date or period of performance.

(d) A small business concern requesting relief under subsection (a) shall support that request with the following documentation and certification:

(1) a brief description of the contract, indicating the date of execution and of any amendment thereto, the items being procured, the price and delivery schedule, and any revision thereof, and any other special contractual provision as may be relevant to the request;

(2) a history of performance indicating when work under the contract or commitment was begun, the progress made as of the date of the application, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion thereof;

(3) a statement of the factors which have caused the loss under the contract;

(4) a statement as to the course of events anticipated if the request is denied;

(5) a statement of payments received, payments due and payments yet to be received or to become due, including advance and progress payments, and amounts withheld by the Government, and information as to other obligations of the Government, if any, which are yet to be performed under the contract;

(6) a statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

(7) a statement and evidence of the contractor's present estimate of total costs under the contract if enabled to complete, broken down between costs accrued to date of request, and runout costs, and as between costs for which the contractor has made payment and those for which he is indebted at the time of the request;

(8) a statement and evidence of the contractor's estimate of the final price of the contract, giving effect to all escalation, changes, extras, and other comparable factors known or contemplated by the contractor;

Request for
relief,
documentation
and certification.

(9) a statement of any claims known or contemplated by the contractor against the Government involving the contract in question, other than those referred to under (8) above;

(10) an estimate of the contractor's total profit or loss under the contract if required to complete at the original contract price;

(11) an estimate of the total profits from other Government business, and all other sources, during the period from the date of the first contract involved to the latest estimated date of completion of any other contracts involved;

(12) balance sheets, certified by a certified public accountant, as of the end of the contractor's fiscal year first preceding the date of the first contract, as of the end of each subsequent fiscal year, and as of the date of the request together with income statements for annual periods subsequent to the date of the first balance sheet; and

(13) a list of all salaries, bonuses, and all other forms of compensation of the principal officers or partners and of all dividends and other withdrawals, and all payments to stockholders in any form since the date of the first contract involved.

DELEGATION

SEC. 5. The head of each executive agency shall delegate authority conferred by this Act, to the extent practicable, to an appropriate level that will permit the expeditious processing of applications under this Act and to insure the uniformity of its application. 41 USC 252 note.

LIMITATIONS

SEC. 6. (a) The authority prescribed in section 4(a) shall apply only to contracts which have not been completely performed or otherwise terminated and which were entered into during the period from August 15, 1971, through October 31, 1974. 41 USC 252 note.

(b) The authority conferred by section 4(a) of this Act shall terminate September 30, 1976. Termination date.

Approved December 31, 1975.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-154 (Comm. on Small Business) and No. 94-724 (Comm. of Conference).

SENATE REPORT No. 94-378 accompanying S. 1259 (Comm. on Government Operations).

CONGRESSIONAL RECORD, Vol. 121 (1975):

Apr. 22, considered and passed House.

Oct. 29, S. 1259, considered in Senate.

Oct. 30, considered and passed Senate, amended, in lieu of S. 1259.

Dec. 15, House agreed to conference report.

Dec. 17, Senate agreed to conference report.